

**Representative Ken Ivory** proposes the following substitute bill:

**BUSINESS SERVICES AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: Scott D. Sandall

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**LONG TITLE**

**General Description:**

This bill prohibits a person from coordinating with another to intentionally destroy certain companies by eliminating the viable options for the companies to obtain a product or service.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits a person from coordinating with another to intentionally destroy certain companies by eliminating the viable options for the companies to obtain a product or service;
- ▶ allows a person to bring a civil action for injunctive relief or damages for a violation of the prohibition;
- ▶ subject to exceptions, requires a court to award three times the damages sustained plus attorney fees and costs in the civil action; and
- ▶ creates rebuttable presumptions related to damages and costs in the civil action.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **13-63-101**, Utah Code Annotated 1953

30 **13-63-201**, Utah Code Annotated 1953



32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **13-63-101** is enacted to read:

34 **CHAPTER 63. BUSINESS SERVICES BOYCOTT RESTRICTIONS**

35 **Part 1. General Provisions**

36 **13-63-101. Definitions.**

37 As used in this chapter:

38 (1) "Boycotted company" means a company that:

39 (a) engages in, facilitates, or supports the manufacture, import, distribution,  
40 advertising, sale, or lawful use of a firearm, ammunition, or another component or accessory of  
41 a firearm or ammunition;

42 (b) does not meet or commit to meet:

43 (i) diversity, equity, or inclusion criteria, including corporate board or employment,  
44 composition, compensation, or disclosure criteria that incorporates race, color, sex, religion,  
45 ancestry, or national origin;

46 (ii) environmental, social, or governance criteria in that the entity engages in the  
47 exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based or  
48 nuclear energy, timber, mining, or agriculture; or

49 (iii) environmental standards, including standards for eliminating, reducing, offsetting,  
50 or disclosing greenhouse gas-emissions, beyond applicable state and federal law requirements;  
51 or

52 (c) does not facilitate or commit to facilitate access to abortion or sex characteristic  
53 surgical procedures.

54 (2) (a) "Company" means a corporation, partnership, limited liability company, or  
55 similar entity.

56 (b) "Company" includes any wholly-owned subsidiary, majority-owned subsidiary,

57 parent company, or affiliate of an entity described in Subsection (2)(a).

58 Section 2. Section 13-63-201 is enacted to read:

59 **Part 2. Prohibitions**

60 **13-63-201. Coordinated elimination of boycotted company's options to obtain a**  
61 **product or service -- Civil action -- Damages -- Attorney fees -- Rebuttable presumptions.**

62 (1) A person who offers a product or service may not, with the specific intent of  
63 destroying a boycotted company, coordinate or conspire with another person to eliminate the  
64 viable options for the boycotted company to obtain the product or service.

65 (2) (a) A person who is injured or is threatened with injury to the person's business or  
66 property by a violation of Subsection (1) may bring an action for injunctive relief or damages.

67 (b) Subject to Subsections (3) through (5), in an action for a violation of Subsection  
68 (1), the court shall:

69 (i) award three times the amount of damages sustained plus the cost of suit and  
70 reasonable attorney fees; and

71 (ii) grant appropriate temporary, preliminary, or permanent injunctive relief.

72 (c) In an action for a violation of Subsection (1), the court shall approve any attorney  
73 fees and arrangements for the payment of attorney fees, including contingency fee agreements.

74 (3) (a) Except as provided in Subsection (3)(b), if the court determines that a judgment  
75 in the amount of three times the damages awarded plus attorney fees and costs will directly  
76 cause the insolvency of the defendant, the court shall reduce the amount of judgment to the  
77 highest sum that would not cause the defendant's insolvency.

78 (b) The court may not reduce a judgment to an amount less than the amount of  
79 damages sustained plus the costs of suit and reasonable attorney fees.

80 (4) Damages, costs, and attorney fees may not be recovered under this section from:

81 (a) a political subdivision;

82 (b) an official or employee of a political subdivision acting in an official capacity; or

83 (c) a person based on an official action directed by a political subdivision or a political  
84 subdivision's official or employee acting in an official capacity.

85 (5) (a) (i) In an action for a violation of Subsection (1), there is a rebuttable  
86 presumption that:

87 (A) the injured person who dealt directly with the defendant incurred at least 1/3 of the

88 damages and is entitled to recover at least 1/3 of the awarded damages; and

89 (B) the injured person who dealt indirectly with the defendant incurred at least 1/3 of  
90 the damages and is entitled to recover at least 1/3 of the awarded damages.

91 (ii) The court shall award the remaining 1/3 of the damages after the awards described  
92 in Subsection (5)(a)(i) to the injured person the court determines is most likely to have  
93 absorbed the damages.

94 (b) In an action for a violation of Subsection (1), there is a rebuttable presumption that:

95 (i) each level in a product's or service's distribution chain passed on the increments in  
96 the product's or service's cost due to an increase in the cost of an ingredient or a component  
97 product or service that was caused by a violation of Subsection (1); and

98 (ii) the product's or service's cost under Subsection (5)(b)(i) is equal to the change in  
99 the cost, in dollars and cents, of the ingredient, component product, or service to the product's  
100 or service's first purchaser.

101 (6) This section does not prohibit a person from seeking a remedy available to the  
102 person independent of this section, including a remedy under Title 7, Financial Institutions Act,  
103 Title 61, Chapter 1, Utah Uniform Securities Act, or Title 76, Chapter 10, Part 31, Utah  
104 Antitrust Act.